FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1959.

No. [redacted] 219

CECIL LEWEY,

Appellant,

vs.

WILLIAM JONES, a minor, by PAULINE JONES SHAMBLIN, his mother and next friend,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

Certificate of Service Appended.

WILLIAM C. WINES,
MARK O. ROBERTS,
JAMES E. REED,
1028 South Grand Avenue, West,
Springfield, Illinois,
Attorneys for Appellant.

CHAMPLIN-SHEALY COMPANY, CHICAGO [redacted] 865

INDEX.

	PAGE
Opinions below	1
Grounds upon which the jurisdiction of this Court is invoked	2
The Statutory Provision conferring jurisdiction of this Court on this Appeal	2
Cases Relied upon as sustaining this Court's Jurisdiction	2
The Citation and Text of Illinois Supreme Court's Rule 19.4, the validity of which, as construed and applied in this case is involved	3
The Questions presented by this appeal	3
Statement of the Case	4
The Federal Constitutional Questions presented are substantial:	
I—There is a direct conflict of authority as to whether the compulsory disclosure of public liability insurance before the plaintiff has established liability deprives the defendant of Federal constitutional rights	6
II—Compulsory disclosure of liability insurance before judgment deprives defendants, including appellant, of property without due process of law	8
III—Compulsory disclosure of liability insurance when no corresponding disclosure of other assets is required denies insured defendants equal protection of the law	8
IV—Compulsory disclosure of liability insurance impairs the obligation of contract in violation of Article I, Section 10 of the Constitution of the United States	9
V—Compulsory disclosure of liability insurance amounts to an unreasonable search and seizure and, therefore, denies due process of law	10

Appendix 1—Opinion and order of the trial court 11

Appendix 2—Order of the Supreme Court of Illinois dismissing appellant's appeal to that court 12

Certificate of Service 13

TABLE OF CASES AND STATUTES CITED.

Bean v. Bast, ..., S. Dak. ...., 80 N. W. 565 8

Brooks v. Owen, Supreme Court of Florida 6

Demaree v. Superior Court, 10 Cal. 2d 99, 73 Pac. 2d 605 7

Gallimore v. Dye, 21 F. R. D. 283 ..... 5, 6, 8, 10

Goheen v. Goheen, 9 N. J. Misc. 507, 154 Atl. 393 7

Hamilton v. Univ. of Cal., 293 U. S. 245 2

Illinois v. Board of Education, 333 U. S. 303 2

Jeppesen v. Swanson, 243 Minn. 547 7

McNeeley v. Perry, 18 F. R. D. 360 7

McClure v. Boeger, 105 F. Supp. 12 7

Orgel v. McCurd, 8 F. R. D. 585 7

People ex rel. Terry v. Fisher, 12 Ill. 2d 231 5

Pietrunto v. Superior Court, 84 Ariz. 291, 327 Pac. 2d 746 ..... 7, 9

Roembke v. Wisdom, 22 F. R. D. 197 7

State ex rel. Allen v. District Court, 69 Nev. 196, 245 .. 7, 8

Superior Insurance Co. v. Superior Court, 37 Cal. 2d 749 8

U. S. Judicial Code, Sec. 1254 2

Constitution of the United States, Art I, Sec. 10 .... 2, 4

Supreme Court of Illinois, Rule 19-4 (Ill. Rev. Stat. 1957, Ch. 10, Par. 101.19-4, Vol. 2, p. 1108 3

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1959.

No.

CECIL LEWEY,

Appellant,

vs.

WILLIAM JONES, a minor, by PAULINE JONES SHAMBLIN, his mother and next friend,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

OPINIONS BELOW.

There are no reported opinions in this case. The Supreme Court of Illinois rendered no opinion. The trial court rendered an opinion that appears at pages 20-22 of the Record, the text of which is reproduced as Appendix I to this Statement.

GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Date of The Judgment Sought To Be Reviewed, The Time Of Its Entry, The Date The Notice Of Appeal Was Filed, And The Court In Which It Was Filed.

The judgment of the Supreme Court of Illinois sought to be reviewed was rendered on March 10, 1959. No petition for rehearing was filed.

Notice of Appeal was filed on May 18, 1959, in the Supreme Court of Illinois.

The Statutory Provision Conferring Jurisdiction Of This Court On This Appeal.

This court's jurisdiction on this appeal is conferred by Section 1257 of the United States Judicial Code, this being a case in which Rule 19-4 of the Supreme Court of Illinois, which has the force of a statute, has been held constitutional in its application to appellant as against appellant's contention that the statute as so construed and applied denies appellant due process and deprives him of equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States and impairs the obligation of his contract in violation of Article I, Section 10 of the Constitution of the United States.

Cases Relied Upon As Sustaining This Court's Jurisdiction.

Any rule or regulation having the force of law is a "statute" and, if held constitutional, supplies this Court's jurisdiction in direct appeal. *Illinois* v. *Board of Education*, 333 U. S. 303. *Hamilton* v. *University of California*, 293 U. S. 245.

The Citation And Text Of Illinois Supreme Court's Rule 19-4, The Validity Of Which, As Construed And Applied In This Case Is Involved.

Rule 19-4 of the Rules of the Supreme Court of Illinois, which rule has been construed and found constitutional as applied to appellant in this case, appears in Illinois Revised Statutes, 1957, Chapter 110, Paragraph 101.19-4, Volume 2, p. 1108, is in full as follows:

"Scope and Manner of Examination and Cross-Examination. (1) Discovery Depositions.

"Upon a discovery deposition, the deponent may be examined regarding any matter, not privileged, relating to the merits of the matter in litigation, whether it relates to the claim or defense of the examining party or of any other party, including the existence, description, nature, custody, condition and location of any documents or tangible things and the identity and location of persons having knowledge of relevant facts. The deponent may be questioned by any party, and if hostile, may be questioned as if under cross-examination.

"(2) Evidence Depositions.

"Upon an evidence deposition the examination and cross-examination shall be the same as though the deponent were testifying at the trial."

THE QUESTIONS PRESENTED BY THIS APPEAL.

1. The Supreme Court of Illinois has construed that court's Rule 19-4, which relates to discovery, as requiring the disclosure by a defendant in an Illinois personal injury action of the existence and extent of public liability insurance coverage. That rule as so construed has been applied to appellant in this case, appellant having been held in contempt of the City Court of Alton, Illinois for failure to make disclosure of insurance coverage. Does Rule 19-4 of the Supreme Court of Illinois as so construed and applied

against appellant deprive appellant of due process of law under the 14th Amendment to the Constitution of the United States?

2. Does Illinois Supreme Court Rule 19-4 as so construed and applied to appellant deprive appellant of equal protection of the law under the 14th Amendment to the Constitution of the United States?

3. Does the Illinois Supreme Court's Rule 19-4 as so construed and applied to the appellant impair the obligation of appellant's contract of insurance with his liability insurance carrier within the inhibition of that provision of Article I, Section 10, of the Constitution of the United States, which provides, "No State shall . . . pass any . . . Law impairing the obligations of contract"?

STATEMENT OF THE CASE.

Appellee commenced this action against appellant for injuries sustained in an automobile accident as the result of appellant's alleged negligence, in the City Court of Alton, Illinois.

In pre-trial proceedings, the trial court required appellant to disclose the existence and amount, if any, of any casualty liability insurance covering the accident. This the trial court did over specific assertion in appellant's answer to rule to show cause that compelling such disclosure would deprive him of due process and equal protection of law under the Fourteenth Amendment to the Constitution of the United States and would impair his obligation of contract under Article I, Section 10 of that Constitution (Rec. 14-20).

When appellant refused to make such disclosure, the Trial Court held appellant in contempt and fined him $100. Such an order is final and reviewable. The order embodied

the Trial Court is pronouncement that substantial Federal Constitutional questions were presented. (Rec. 21-22, Appendix I, *post.*)

But in requiring this disclosure, the trial court, although deeming itself bound by the decision of the Supreme Court of Illinois in *People ex rel. Terry* v. *Fisher*, 12 Ill. (2d) 231, 145 N. E. (2d) 588, explicitly declared that "the case presents important questions of constitutional law and civil practice" (Rec. 21).

In fact, the decision of the trial court, although in accord with and compelled by *People ex rel. Terry* v. *Fisher*, 12 Ill. (2d) 231, 145 N. E. (2d) 588, is directly contrary to the decision of the United States District Court for the Eastern District of Illinois in *Gallimore* v. *Dye*, 21 F.R.D. 283, in which that court, entertaining an action for personal injuries under Illinois law, held that to compel the defendant to disclose the existence of casualty insurance covering the accident involved would be to deny Federal constitutional rights.

Appellant took a direct appeal to the Supreme Court of Illinois, renewing his Federal constitutional contentions. (*Appellant's Brief*, R. pp. 44-45, 52-72, 72-82). Appellee filed a motion to dismiss the appeal (Rec. 136-149), which the Supreme Court sustained by an order entered March 10, 1959, dismissing the appeal without opinion over appellant's objection (Rec. 167).

Appellant's Notice of Appeal to this Court, with proof of service, was filed on May 11, 1959 (Rec. 168).

THE FEDERAL CONSTITUTIONAL QUESTIONS PRESENTED ARE SUBSTANTIAL.

I.

There is a direct conflict of authority as to whether the compulsory disclosure of public liability insurance before the plaintiff has established liability deprives the defendant of Federal constitutional rights.

In *Brooks* v. *Owen*, the Supreme Court of Florida declared that to compel a defendant to disclose the existence of public liability insurance would be to deprive him of his property without due process of law. That court said:

> ". . . if it (discovery of insurance coverage) were improperly ordered, we are inclined to agree with the defendants as to the constitutional violations."

In *Gallimore* v. *Dye*, 21 F. R. D. 283, the District Court for the Eastern District of Illinois, Judge Jurgens presiding, the court said at:

> "Requiring the disclosure of the insurance policy, or other assets, which could very well be the next step, would give to all the world knowledge of the financial condition of any given defendant because court records generally are open for public inspection and this would certainly, in the opinion of this court, invade the privacy of an individual before any liability has been determined against him. A more tempting invasion of the right or privacy or violation of the right against unreasonable searches would be difficult to imagine."

Holding directly that to compel disclosure of insurance would be to deprive the defendant of due process law under the Fifth Amendment, the court said:

> "A reasonable inference of the arguments in *McClure* v. *Boeger*, 105 F. Supp. 612, and *Jeppesen* v. *Swanson*,

> 243 Minn. 547, is that a defendant could be required to disclose his financial resources prior to an adjudication of liability. To this court it appears that such requirement would contravene the provisions of the Fifth Amendment. It would further appear that to require a defendant to disclose his insurance coverage prior to adjudication of liability would also be a contravention of the Fifth Amendment."

It is particularly important to note that the ruling of the District Court for the Eastern Division of Illinois, being interlocutory, is not reviewable. As a consequence, whether a defendant in the Eastern District of Illinois need or need not disclose insurance coverage depends upon whether the suit is pending in the state or Federal court.

There is a direct and serious conflict in the authorities as to whether a defendant in a personal injury action need or need not disclose insurance coverage. To be sure, the decisions are not all cast in constitutional accents.

The following cases deny the right to such disclosure:

Roembke v. *Wisdom*, 22 F. R. D. 197, (Southern District of Illinois *per* Judge Brygle).
Goheen v. *Goheen*, 9 N. J. Misc. 507, 154 Atl. 393,
McClure v. *Boeger*, 105 F. Sup. 12,
McNelley v. *Perry*, 18 F. R. D. 360,
State ex rel. Allen v. *District Court*, 69 Nev. 196, 245, P. (2d) 999,
Jeppesen v. *Swanson*, 243 Minn. 547, 68 N. W. (2d) 649.
Pietrunto v. *Superior Court*, 84 Ariz. 291, 327 Pac. 2d 746.

The following cases, among others, enforce the right to such disclosure:

Demaree v. *Superior Court*, 10 Cal. (2d) 99, 73 P. (2d) 605,
Orgel v. *McCurd*, 8 F. R. D. 585,

Superior Insurance Co. v. *Superior Court*, 37 Cal. (2d) 749, 235 P. (2d) 833.

State ex rel. Allen v. *District Court*, 69 Nev. 196, 245 Pac. 2d 999.

Bean v. *Bast*, ..., S. Dak. ...., 80 N. W. 2d. 565.

II.

Compulsory disclosure of liability insurance before judgment deprives defendants, including appellant, of property without due process of law.

A policy of casualty insurance is a contract between the insurance company and the assured and is the property of the assured. In the absence of contractual provisions (or of a statute that is imported into the contract of insurance) an injured plaintiff has no direct right of action against the defendant's insurer, 29 *Am. Jur. Sec.*, 126, p. 142.

Compulsory disclosure of liability insurance visits upon the defendant a leverage for settlement that is independent of the merits of the case against him, invades his right of privacy, which has been aptly described as "the right to be let alone" and would, in effect, confer upon the plaintiff at least a contingent interest in the defendant's insurance policy before adjudication of liability. These considerations demonstrate that compulsory disclosure of liability insurance amounts to the expropriation of such insurance without due process of law.

III.

Compulsory disclosure of liability insurance when no corresponding disclosure of other assets is required denies insured defendants equal protection of the law.

As the District Court observed in *Gallimore* v. *Dye*, 21 F. R. D. 283:

"If the plaintiff is permitted to discover the existence, amount, and provisions of liability coverage under the discovery provisions of Federal Rules prior to liability having been determined against the defendant, then it could logically follow that he should be permitted the same latitude in discovery of the defendant's other assets, such as stocks, bonds, real estate, bank account, and in general the total assets of the defendant of whatever nature or kind. It would then, under cover of these rules, be possible for anyone to discover the assets of anyone else merely by filing a complaint against the party whose assets the filing party desires to know and then propound the interrogatories. This, whether the party filing has a valid claim or has merely conjured up a claim for the sole purpose of discovering the assets of the party charged."

The court of Illinois made it clear in *Terry* v. *Fisher*, 12 Ill. (2d) 231, 145 N. E. (2d) 588, that liability insurance is treated by that court as *a special kind of property* as to the existence of which discovery is compulsory, there being no corresponding compulsion to disclose other assets.

Thus, Illinois Supreme Court Rule 19-4 as construed by the Supreme Court of Illinois invidiously discriminates against holders of public liability insurance and in favor of defendants who enjoy other forms of property.

IV.

Compulsory disclosure of liability insurance impairs the obligation of contract in violation of Article I, Section 10 of the Constitution of the United States.

Unless otherwise provided by contract or statute, a policy of liability insurance is a private contract between the issuing insurance company and the assured defendant. The decisions of the Supreme Court of Illinois in *Terry* v. *Fisher*, 12 Ill. (2d) 231, 145 N. E. (2d) 588, is instinct with the recognition that policies of liability insurance are

private contracts between the insuring company and the assured defendant. To compel the defendant to disclose the policy and its terms is to enlarge the potential loss of the defendant and of the company by increasing the pressure for settlement, hence to expand and, therefore, to impair the obligation of the contract.

V.

Compulsory disclosure of liability insurance amounts to an unreasonable search and seizure and, therefore, denies due process of law.

Although the Fourth Amendment is applicable only to the Federal Government, unreasonable searches and seizures constitute a denial of due process of law.

As Judge Jurgens observed in *Gallimore* v. *Doe*, 21 F. R. D. 283:

> "Requiring the disclosure of the insurance policy, or other assets, which could very well be the next step, would give to all the world knowledge of the financial condition of any given defendant because court records generally are open for public inspection and this would certainly, in the opinion of this court, invade the privacy of an individual before any liability has been determined against him. A more tempting invasion of the right of privacy or violation of the right against unreasonable searches would be difficult to imagine."

Respectfully submitted,

WILLIAM C. WINES,
MARK O. ROBERTS,
JAMES L. REED,
1028 South Grand Avenue, West,
Springfield, Illinois,
Attorneys for Appellant.

APPENDIX I.

OPINION AND ORDER OF THE TRIAL COURT.

Order of court finding defendant guilty of contempt, entered September 4, 1958, as follows:

Defendant's objections to answering plaintiff's interrogatory No. 2 having heretofore been overruled, and the defendant ordered to answer same, but failed so to do, and this court having heretofore ordered the defendant to show cause as to why he should not be adjudged guilty of and punished for contempt of court for failure to answer said interrogatory, and the order to show cause having this day come on for hearing, with defendant's written answer thereto, and the defendant being present in open court throughout this hearing, and the court having fully considered the objections of the defendant, both to giving answer to Interrogatory No. 2, and the answer to the rule to show cause and having heard oral argument of counsel and having considered each of the points made by defendant's answer and plaintiff's objections, doth find that substantial constitutional and procedural points are involved which have not heretofore been passed upon by the Supreme Court in *Terry* v. *Fisher*, 12 Ill. (2) 231, that said points are raised by defendant in good faith; that the case presents important questions of constitutional law and civil practice, and the procedure herein is similar to that followed in *Krupp* v. *Chicago Transit*, 8 Ill. (2) 37, 132 N. E. (2) 532, 534, and the court notes the decisions of *Gallimore* v. *Due*, (Ill.) 21 FRD 283, and *Brooks* v. *Owens*, 97 So. (2d) 693 (Fla.), where reference was made to certain constitutional points here in question, yet nevertheless, by reason of the decision in *Terry* v. *Fisher*, this court feels compelled to overrule defendant's answer and objections so that said questions may be finally determined. Further, the court finds that this cause may proceed in due course for trial upon the merits and without delay to the plaintiff or other parties; and the court takes judicial notice of the fact that defendant has made proof of financial responsibility pursuant to Chap. 95½, Sec. 7-101 *et seq.*

Therefore, the court does hereby overrule the answer and each of the objections made by the defendant on the order to show cause, and it is further ordered, adjudged and decreed that for wilful failure to file answer under oath, as required by plaintiff's Interrogatory No. 2, the defendant be and he is hereby adjudged in contempt of this court, and it is further ordered, adjudged and decreed that in order to purge himself of said contempt, he pay to the clerk of this court a fine of One Hundred Dollars ($100.00), and upon payment of said fine he stand purged of the contempt aforesaid.

Multiple claims or multiple parties being involved in this action, the court finds and certifies pursuant to Sec. 50(2), Ch. 110, Ill. Rev. Stat., that there is no just reason for denying or delaying an appeal by the defendant, Cecil Lewey, to the Supreme Court of Illinois, from the order of contempt and the imposed fine therefor. Bond for appeal is set at Five Hundred Dollars ($500.00). Clerk to approve appeal bond, same to be filed in ten (10) days from date of this order. That upon the filing of said bond same shall operate as a stay order of the payment of the aforesaid fine, all until further order of the court.

APPENDIX 2.

ORDER OF THE SUPREME COURT OF ILLINOIS DISMISSING APPELLANT'S APPEAL TO THAT COURT, ENTERED MARCH 10, 1959.

And now, on this day; the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellee to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellee recover of and from the said appellant costs by him in this behalf expended, to be taxed, and that he have execution therefor."

CERTIFICATE OF SERVICE.

I, William C. Wines, one of the attorneys for Cecil Lewey, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of July, 1959, I served copies of the foregoing Jurisdictional Statement to the Supreme Court of the United States on counsel for appellee by mailing copies thereof addressed as follows:

To:

Armbruster & Diaz
217 West 3rd Street
Alton, Illinois

Morris B. Chapman
1406 Niedringhaus
Granite City, Illinois

George Moran
1930 State Street
Granite City, Illinois

WILLIAM C. WINES,
One of Attorneys for Appellant.